REMARKS

In the Office Action[1], the Examiner took the following actions:

rejected claims 6-8 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;

rejected claims 1-8 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication 2006/0294238 A1 to Naik et al. ("*Naik*").

Applicants have amended claims 1 and 6. Claim 2 has been canceled without prejudice or disclaimer. Accordingly, claims 1 and 3-8 remain pending.

I. Regarding the rejection of claims 6-8 under 35 U.S.C. § 101

Regarding the rejection of claims 6-8 under 35 U.S.C. § 101, the Examiner rejected the claims as being directed to functional descriptive material *per se*. (See Office Action at pp. 2-3). Applicants respectfully traverse the rejection.

However, in an effort to advance prosecution, Applicants have amended claim 6 to recite that the computer program product is "tangibly embodied in a computer-readable storage device," thereby obviating the Section 101 rejection. Claims 7 and 8 depend from claim 6. Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 6-8 under 35 U.S.C. § 101.

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[1] The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

II. Regarding the rejection of claims 1-8 under 35 U.S.C. § 102(e) as being anticipated by *Naik*

Applicants respectfully traverse the rejection of claims 1-8 under 35 U.S.C.

§ 102(e) as anticipated by *Naik*. In order to properly establish that *Naik* anticipates

Applicants' claimed invention under 35 U.S.C. § 102, each and every element of each of

the claims in issue must be found, either expressly described or under principles of

inherency, in that single reference. Furthermore, "[t]he identical invention must be

shown in as complete detail as is contained in the … claim." *See* M.P.E.P. § 2131,

quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913,

1920 (Fed. Cir. 1989).

For example, amended claim 1 recites, among other things:

> upon receipt of a command requesting a resource, <u>loading new instructions to modify original instructions</u> residing in a computer system to modify the behavior of the one or more computational resources of the computer system; and
> <u>reverting</u> the new instructions in the computer system <u>to the original instructions</u> without restarting the computer system.

(emphasis added). *Naik* does not disclose at least these elements of Applicants'

claimed invention.

Naik discloses "controlling the participation and performance management of a

distributed set of resources in a grid environment. The control is achieved by

forecasting the behavior of a group of shared resources, their availability and quality of

their performance in the presence of external policies governing their usage, and

deciding the suitability of their participation in a grid computation." (*Naik*, Abstract).

The Examiner cites to page 3, paragraph 0032 of *Naik* as disclosing "upon receipt of a command, load[ing] new instructions to modify current instructions residing in the service that modifies a behavior of the service without restarting the service" as was previously recited in claim 1. (Office Action at p. 4). This is not correct. Neither the cited portion of *Naik* nor any other portions disclose any aspect of loading new instructions or modifying instructions without restarting, as recited in claim 1.

Page 3, paragraph 0032 of *Naik* discusses:

> a hierarchical grid resource management system ... that performs the above described tasks without the grid clients having any knowledge of underlying uncertainties. The grid clients do not have to know the name or location of the actual resources used. These actions are performed transparently to the grid clients and the <u>grid clients are oblivious</u> to the <u>dynamic changes in the availability of grid resources</u>.

(emphasis added). Furthermore, in paragraph 0035 of *Naik*, it is disclosed that "[t]he present invention ... allows dynamic associations and disassociation of shared resources with the grid ... performs dynamic aggregation of shared resources to satisfy grid client requests."

However, this does not constitute "loading new instructions to modify original instructions ... to modify the behavior of the one or more computational resources on a computer system; and reverting the new instructions in the computer system to the original instructions without restarting the computer system" as required by amended claim 1. The "dynamic changes" discussed in *Naik* refer only to the fact that the grid clients of *Naik* are not aware of <u>associations</u> and <u>disassociations</u> of resources throughout the grid; this is very different than "loading new instructions to modify original

instructions ... to modify the behavior of the one or more computational resources on a computer system; and reverting the new instructions in the computer system to the original instructions without restarting the computer system."

Naik thus fails to teach at least "loading new instructions to modify original instructions ... to modify the behavior of the one or more computational resources on a computer system; and reverting the new instructions in the computer system to the original instructions without restarting the computer system", as recited in amended claim 1. Accordingly, *Naik* cannot anticipate claim 1. Thus, claim 1 is allowable for at least these reasons.

Claim 3 recites, among other things:

loading <u>a first set of instructions</u> from a location remote from the service in
    response to the command;
<u>replacing</u> a <u>portion of instructions</u> for the service <u>with the first set of
    instructions</u>; and
<u>executing</u> the service according to <u>the first set of instructions</u>.

(emphasis added). *Naik* does not disclose at least these elements of Applicants' claimed invention.

As discussed above in relation to independent claim 1, *Naik* discusses that the grid clients disclosed by *Naik* do not have any knowledge of dynamic changes to grid resources, and the system allows dynamic association and disassociation of shared resources. (See *Naik*, paragraphs 0032 and 0035).

The Examiner cites to page 10, paragraph 0032 of *Naik* as disclosing "loading a first set of instructions from a location remote from the service in response to the command" as recited in claim 3. (Office Action at p. 4). This is incorrect. This paragraph states that "grid services may be modeled as web services ... [t]he grid

services could also be modeled as any service that can be accessed remotely using any client-server technology." (*Naik*, p. 10, ¶ 0128). Nowhere in this paragraph, nor anywhere else, does *Naik* discuss "loading a first set of instructions," as required in claim 3, rather, it only states that "services can be accessed remotely."

The Examiner then points to page 3, paragraph 0034 of *Naik* as disclosing "replacing a portion of instructions for the service with the first set of instructions" as recited in claim 3. This too is incorrect, as the paragraph discloses that "the grid management system described in the instant invention <u>can incorporate resources</u> from backend servers, web servers, and grid servers." (emphasis added). Incorporating resources clearly does not constitute "<u>replacing</u> a portion of instructions for the service <u>with the first set of instructions</u>," as recited in claim 3. (emphasis added).

Naik thus fails to teach at least "loading <u>a first set of instructions</u> from a location remote from the service in response to the command; <u>replacing</u> a <u>portion of instructions</u> for the service <u>with the first set of instructions</u>; and <u>executing</u> the service according to <u>the first set of instructions</u>", as recited in claim 3. (emphasis added). Accordingly, *Naik* cannot anticipate claim 3. Thus, claim 3 is allowable for at least these reasons. Claims 4 and 5 are also allowable at least due to their dependence from claim 3.

Independent claim 6 , while of different scope, recites elements similar to those of claim 3 and is thus allowable over *Naik* for at least the same reasons discussed above in regard to claim 3. Claims 7 and 8 are also allowable at least due to their depending from claim 6.

Conclusion

In view of the foregoing, Applicants respectfully request reconsideration and

reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge

any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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